IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6961 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. P M DIESELS LIMITED - Petitioner(s)

Versus

UNION OF INDIA & 3 - Respondent(s)

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Appearance :

MR YJ JASANI for Petitioner(s) : 1,
MR JITENDRA MALKAN for Respondent(s) : 1,
MS PJ DAVAWALA for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 15/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and / or order

quashing and setting aside registration of respondent No.4 by the name Marshal Pumps Pvt. Ltd. A further prayer is also made to permanently restrain the respondent Nos.2 & 3 from registering the respondent No.4 or any other company by a name which includes the word/s “Marshal”, “Fieldmarshal” or “FM Fieldmarshal”.

2. It is the contention on behalf of the petitioner that the petitioner and its predecessor M/s Patel Manufacturers – a partnership firm since 1963 and they are registered proprietors of trade mark “Fieldmarshal”. It is the contention of the petitioner that as the petitioner was apprehending that some other persons including the respondent No.4 – a private company are trying to get their name registered with name “Marshal”, the petitioner submitted complaint regarding incorporation of the said name and / or with similar name or that name under Section-20 of the Companies Act, 1956 read with Section.28 and 29 of the Trade and Merchandise Marks Act and submitted objections / complaint on

12.6.1989. It is the contention on behalf of the petitioner that by communication dated 20.6.1989 the Registrar of Companies (Gujarat) informed the petitioner that two different promoters viz. (1) Shri Nanalal Makwana and Shri Gordhanbhai Padalia and (2) Shri Govindbhai D. Patel and Shri Shivlal C. Patel have submitted documents for incorporation of the companies with proposed name of the company as “Marshal Forge Pvt. Ltd.” and “Patel Field Marshal Pumps Pvt. Ltd.” and the petitioner was called upon to submit specific objections if any against incorporation of the above companies with the above proposed name with the ground of objections and the petitioner was also communicated that if reply is not submitted within a period of 15 days from the date of receipt thereof i.e. From 20.6.1989 the above companies will be registered with the above proposed names. It is the contention on behalf of the petitioner that the petitioner submitted detailed objections vide communication / objection dated 5.7.1989 and inspite of that the petitioner is communicated vide communication dated 6.12.1989 that

the said office has registered the company under the name and style of “Marshal Pumps Pvt. Ltd.” promoted by Mr.Govindbhai Patel and Mr.S.C.Patel on 29.6.1989. Thus, it is the contention on behalf of the petitioner that when the petitioner was given 15 days time to submit specific objections vide communication dated 20.6.1989, decision came to be taken by Registrar of Companies (Gujarat) under the name and style of “Marshal Pumps Ltd.” on 29.6.1989 even without waiting for expiry of the period granted to the petitioner for submitting detailed objections. Thus, it is the case of the petitioner that without considering the objections submitted by the petitioner and / or even without waiting for objections to be submitted by the petitioner, the Registrar of Companies (Gujarat) has granted registration in favour of the respondent No.4 with name “Marshal”. Under the circumstances, it is requested to allow the present special civil application and to set aside the action of the respondent – Registrar of Companies (Gujarat) registering the company under the name and style of

“Marshal Pumps Pvt. Ltd.” promoted by Mr.Govindbhai Patel and Mr.S.C.Patel as the same is without considering the objections submitted by the petitioner and the same is in breach of principles of natural justice.

3. Nobody has remained on behalf of the respondent though served. Even none appears on behalf of the respondent No.4 which is a company in whose favour registration came to be granted in the name and style of “Marshal” on 29.6.1989 which is impugned in the present special civil application. No affidavit-in-reply is filed on behalf of any of the respondents. Under the circumstances, this Court is required to consider and accept what is stated in the present special civil application. Even otherwise, on going through the communication dated 20.6.1989 which is at Annexure-F at page.53 as well as the objections submitted by the petitioner at Annexure-G at page.54 and the impugned communication dated 6.12.1989 that the petitioner was granted 15 days time to submit specific objections against incorporation of

companies with the proposed name of “Marshal” and granting the said companies registration under the name and style of “Marshal Pumps Pvt. Ltd.” promoted by Mr.Govindbhai Patel and Mr.S.C.Patel, it appears that the Registrar of Companies (Gujarat) granted registration in favour of the respondent No.4 with the said name on 29.6.1989 even before expiry of time granted to the petitioner for submitting detail grounds and objections against such registration.

4. Under the circumstances, it emerges and transpires from the record that said registration was without considering the objections submitted by the petitioner and / or without giving any opportunity to the petitioner. Under the circumstances, on that ground alone the impugned decision of Registrar of Companies (Gujarat) registering the company i.e. respondent No.4 under the name and style of “Marshal Pumps Pvt Ltd.” promoted by Mr.Govindbhai Patel and Shri S.C.Patel granted by the Registrar of Companies (Gujarat) requires to be quashed and set aside and the Registrar of Companies (Gujarat) is required to

consider the objections submitted on 5.7.1989 before registering any company under the name and style of “Marshal Pumps Pvt. Ltd.” and / or granting registration with name “Marshal” “Fieldmarshal”.

5. For the reasons stated above, the petition succeeds. The impugned communication / decision of the Registrar of Companies (Gujarat) granting registration to the respondent No.4 with effect from dated 29.6.1989 in the name and style of “Marshal Pumps Pvt. Ltd.” is hereby quashed and set aside. It will be open for the Registrar of Companies (Gujarat) to take an appropriate decision registering the company under the name and style of “Marshal Pumps Pvt. Ltd.” and / or any other company having name of “Marshal” and / or “Fieldmarshal” after considering objections submitted by the petitioner dated 5.7.1989.

6. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R.Shah, J.]

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